

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RUSSELL WINSTON,

Petitioner,

v.

COMMONWEALTH OF
PENNSYLVANIA BOARD OF
PROBATION AND PAROLE,

Respondent.

Civil Action No. 04-68 Erie

MEMORANDUM ORDER

This petition for writ of habeas corpus was transferred from the United States District Court for the Middle District of Pennsylvania and received by the Clerk of Court on March 3, 2004 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on July 22, 2005, recommended that the petition for writ of habeas corpus be dismissed, that a certificate of appealability be denied, and that Petitioner's motion for summary judgment [Doc. No. 23] be denied. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Petitioner by certified mail at SCI Albion, where he is incarcerated, and on Respondent. Petitioner has filed no objections to Magistrate Judge Baxter's Report and Recommendation. After de novo review of the petition and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 11th day of August 2005;

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is DISMISSED and that a certificate of appealability be denied. IT IS FURTHER

ORDERED that Petitioner's motion for summary judgment [Doc. No. 23] is DENIED.

The Report and Recommendation of Magistrate Judge Baxter, filed on July 22, 2005, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge